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No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL.,
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.,
and
THE LINK BELT COMPANY, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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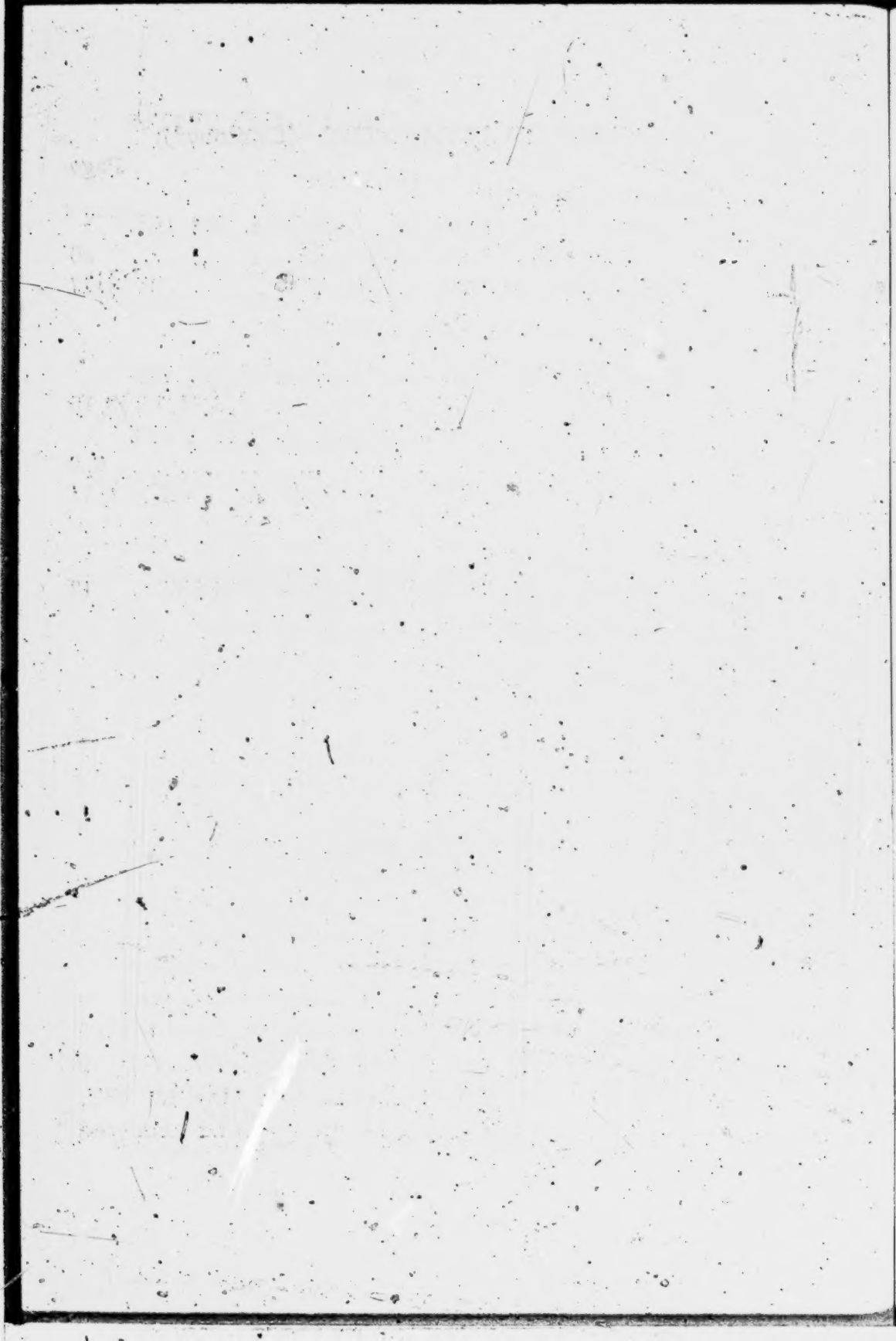
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Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

This is a joint petition for writ of certiorari as authorized by Supreme Court rule 23(5).

Petitioners pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit, entered and rendered in the *Rodrigue* case on May 16, 1968, and its decision and judgment entered and rendered

in the *Dore* case on March 25, 1968, rehearing denied May 15, 1968.

CITATIONS TO OPINIONS BELOW.

The Rodrigue Case

The judgments of dismissal by the United States District Court for the Eastern District of Louisiana, Baton Rouge, Division, in the consolidated cases, "Paulette Boudreaux Rodrigue, et al. vs. Aetna Casualty and Surety Company, et al.", are not reported, but appear in the *Rodrigue* record at pages 103 and 104, and the oral reasons for the judgments appear in the *Rodrigue* record at pages 93 through 100; the two judgments and the oral reasons are printed in Appendix A hereto.

The opinion of the United States Court of Appeals for the Fifth Circuit, dated May 16, 1968, in the *Rodrigue* case is officially reported at F.2d, 1968 and appears in the record at pages 120-121 and is printed in Appendix B hereto. Several weeks prior to the argument of the instant case the Court of Appeals for the Fifth Circuit handed down a decision on the same issue in the case entitled *Dore vs. Link Belt Co.*, 391 F.2d 671. In the *Rodrigue* case the Court for its opinion simply referred to the opinion in the *Dore* case which is printed in Appendix C hereto.

The Dore Case

The judgment of dismissal by the United States District Court for the Western District of Louisiana, Lafayette Division, in the matter entitled "Ella Mae Dubois Dore, Individually, etc. vs. The Link Belt Company, et al.", Civil Action No. 3109, is not reported but appears in the *Dore* record at pages 51 and 52. The judgment was dated October 26, 1966, and was amended on February 14, 1968 and certified as a final judgment on the latter date.

The opinion of the United States Court of Appeals for the Fifth Circuit in *Dore v. Link Belt Company*, 391 F.2d 671, dated March 25, 1968, made final on May 15, 1968, appears in the *Dore* record at pages 58 thru 70 and is printed in Appendix C hereto.

JURISDICTION.

The Rodrigue Case

The judgment of the Court of Appeals was made and entered on May 16, 1968; it appears in the *Rodrigue* record at page 122 and is printed in Appendix B hereto. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

The Dore Case

The judgment of the Court of Appeals in the *Dore* case was made and entered on March 25, 1968, with petition for rehearing denied on May 15, 1968. The judgment appears in the *Dore* record at page 72 and in Appendix C hereto. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION INVOLVED.

Whether the Death on the High Seas Act is the exclusive remedy for death on an artificial island in the Outer Continental Shelf, or, on the other hand, whether the Death on the High Seas Act can be supplemented by the law of the adjacent state which is expressly extended to the artificial islands by the Outer Continental Shelf Lands Act?

Phrased differently, the issue can be stated: Whether an action can be maintained for the non-pecuniary losses, e.g. loss of love, and affection, resulting from death on an artificial island in the Outer Continental Shelf when those losses are recoverable under the law of the adjacent state which is extended to the artificial islands by the Outer Continental Shelf Lands Act but are not recoverable under the Death on the High Seas Act?

STATUTES INVOLVED.

Pertinent portions of the Statutes involved are:

1. The Death on the High Seas Act, 46 U.S.C. 761-768

"§ 761. Right of action; where and by whom brought

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Colum-

bia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person or corporation which would have been liable if death had not ensued.

§ 762. Amount and apportionment of recovery

The recovery in such suit shall be a fair and just compensation for the *pecuniary* loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

§ 764. Rights of action given by laws of foreign countries

Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

§ 767. Exceptions from operation of chapter

~~The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.~~

2. The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq.

"§ 1331(a)(2):

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf and artificial islands and fixed structures thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margins of the Outer Continental Shelf * * *."

3. The Louisiana Death Act, Louisiana Civil Code, Article 2315

"The right to recover damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the

surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased."

STATEMENT OF THE CASE.

The Rodrigue Case

For the death of Butley J. Rodrigue which occurred on March 7, 1964, his widow and two children brought three suits in the United States District Court for the Eastern District of Louisiana.

The death occurred when Mr. Rodrigue fell from high in the derrick of a drilling rig positioned on a fixed structure (artificial island) located in the Outer Continental Shelf approximately twenty-eight miles south of the Louisiana coastline. Mr. Rodrigue landed on the structure floor sustaining crushing injuries which resulted in his immediate or almost immediate death. He never came into contact with the water.

The drilling rig was at the time owned and operated by Mayronne Drilling Company which was insured by Aetna Casualty and Surety Company.

Humble Oil and Refining Company was the owner of the structure and the mineral lease involved. Mr. Rodrigue was an employee of the Loomis Hydraulic Testing Company which had been called by Humble to come onto the structure to perform a test on the drill pipe then being used by Mayronne.

It was alleged in the three suits (two civil actions and one in admiralty pursuant to the Death on the High Seas Act, 46 U.S.C. 761-768) that Mr. Rodrigue died in the course of performing the test and that his death was caused by the joint negligence of Mayronne and Humble.

The reason for bringing more than one suit for the same death was to obtain full recompense for all of the damages sustained because of the death of Mr. Rodrigue. The two civil actions, one against Humble and Aetna with Federal jurisdiction based on diversity of citizenship and the other against Mayronne Drilling Company with Federal jurisdiction based on the Outer Continental Shelf Lands Act, 43 U.S.C., 1333 (b), are brought pursuant to the Louisiana Death Act, Article 2315 of the Louisiana Civil Code. The Louisiana Death Act grants a cause of action not only for the pecuniary losses sustained as a result of the death but also for loss of society, love, companionship, and affection. See for example, *Silverman v. Travelers*, 277 F.2d 257 (5th Cir., 1960); *Parker v. Smith*, 147 So.2d 407 (La. App. 1963). The Death on the High Seas Act only grants remuneration for pecuniary losses. See 46 U.S.C. 762, and see

for example, *Ignier v. Cie de Transports*, 323 F.2d 257; cert. den. 376 U.S. 949.

The three cases were consolidated for purposes of trial with the jury to hear the two Civil Actions and the Judge in Admiralty to apply the Death on the High Seas Act.

On the morning of the trial, motions to dismiss the Civil Actions were filed by the defendants and were granted, the trial judge holding that the Death on the High Seas Act is the exclusive remedy for death occurring on an artificial island in the Outer Continental Shelf even though the Outer Continental Shelf Lands Act expressly extends the law of the adjacent state to the artificial islands.

Then the Court tried the admiralty action pursuant to the Death on the High Seas Act, and finding Mayronne solely at fault, awarded plaintiff the full amount of the pecuniary losses sustained by the death of Butley Rodrigue. The Court's opinion in the admiralty action is reported at 266 F. Supp. 1.

Plaintiff, seeking also recompense of the non-pecuniary losses compensable under the state death act, appealed the dismissal of the two Civil Actions.

Decision in the Court Below in Rodrigue.

The United States Court of Appeals for the Fifth Circuit affirmed holding that "the exclusive remedy

under the circumstances is the Death on the High Seas Act".

Several weeks prior to the argument of the *Rodrigue* case in the Court of Appeals, that court, the Fifth Circuit, handed down a decision on the same issue in the case entitled *Dore vs. Link Belt Co.*, 5th Cir., 1968, 391 F.2d 671 [No. 24370]. In that case the issue of whether the Death on the High Seas Act was the exclusive remedy for death of an offshore worker on an artificial island in the Outer Continental Shelf or, on the other hand, whether the death statute of the adjacent state, extended by the Outer Continental Shelf, Lands Act, could supplement the Death on the High Seas Act had been certified by the district court to the Fifth Circuit. The Fifth Circuit, in the *Dore* case, ruled that the Death on the High Seas Act was the exclusive remedy, ostensibly relying on a Ninth Circuit case, *Higa vs. Transocean Airlines*, 230 F.2d 780 (1956), cert. den., 352 U.S. 802. (But such reliance was misplaced because the *Higa* death did not occur in the Outer Continental Shelf but rather occurred in the open ocean at a place where no statute or jurisprudence had extended the applicability of the state death act—in fact the court in the *Higa* case specifically stated that had there been such a statute or jurisprudence the state law would have supplemented the Death on the High Seas Act.)

The Fifth Circuit in the *Rodrigue* case simply referred to its very recent decision in the *Dore* case and affirmed the dismissal of the civil actions.

The Dore Case

The Dore case is an action for the death of Joseph Dore which occurred on March 14, 1965. His widow and children filed suit in the United States District Court for the Western District of Louisiana.

The death occurred when Mr. Dore fell from his position in a crane attached to a fixed platform located on the Outer Continental Shelf approximately 50 miles south of the Louisiana coastline. It is further alleged that the crane which Mr. Dore was operating collapsed and fell a distance of more than 60 feet to the deck of a vessel which was moored to the fixed platform. Mr. Dore never came into contact with the water.

Petitioner brought the action against The Link Belt Company and Road Equipment Company, Inc. for negligence in designing, manufacturing, assembling, selling, installing and servicing the crane which was involved in the accident and which caused the death of Joseph Dore, and the action is also brought under expressed and implied warranties as manufacturers, assemblers, sellers and installers of the crane. Petitioner brought the action under the General Maritime Laws, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq., and under Article 2315 of the Revised Civil Code of the State of Louisiana.

The court, on Motions to Dismiss filed by the defendants, rendered judgment on October 26, 1966, restricting the plaintiffs' claims to the Death on the

High Seas Act, 46 U.S.C.A. 761, et seq., and striking from the complaint all items of damages other than pecuniary loss sustained.

Petitioner, seeking also to maintain her cause of action under the applicable state death act in addition to the Death on the High Seas Act, appealed the dismissal of the civil action.

Decision of the Court Below in Dore.

The United States Court of Appeals for the Fifth Circuit affirmed, holding that the exclusive remedy of plaintiff in *Dore* was the Death on the High Seas Act.

REASONS FOR GRANTING THE WRIT.

Contrary to the decision of the Court of Appeals in the *Rodrigue* case and the *Dore* case, other circuits and other courts hold that the Death on the High Seas Act is not an exclusive remedy and that it does not pre-empt the field of recovery for death.

The language contained in the Death on the High Seas Act *specifically provides* that state rights of action or remedies for death shall not be affected by the act! The Death on the High Seas Act provides:

767. Exceptions from operation of chapter

"The provisions of any State statute giving or regulating rights of action or remedies for death

shall not be affected by this chapter." (46 U.S.C. Section 767.)

The Second Circuit Court of Appeals in the case of *Doyle vs. Albatross Tanker Corporation*, 367 F.2d 465, 1967 A.M.C. 201, had under consideration the situation in which a seaman had been killed on the high seas. Though his administrators had brought an action under the Jones Act, they wished to supplement that action by also suing the employer under the Death on the High Seas Act so as to take advantage of rights allowed under the Death on the High Seas Act which were not available under the Jones Act. The defendant there contended that either the Jones Act or the Death on the High Seas Act should be the exclusive remedy and cited *Lindgren vs. U. S.*, 281 U.S. 38 (1930) and *Gillespie v. U. S. Steel Corporation*, 379 U.S. 148 (1964). The Court readily distinguished *Lindgren* and *Gillespie* stating that the congressional intent was that as to deaths on the high seas the remedies were not exclusive. The Court ruled:

"Moreover, contrary to appellants' contentions, it appears to be the settled law of the lower federal courts, expressed in numerous cases, that both statutory remedies may be availed of for the purpose of recovering damages for the wrongful deaths of seamen caused by occurrences on the high seas, and that the action in admiralty created by the Death on the High

Seas Act may be pursued by the personal representative of a deceased sailor as well as the action at law provided for in the Jones Act. See, e.g., *Chermesino vs. Vessel Judith Lee Rose, Inc.*, 211 F. Supp. 36 (D. Mass., 1962, aff'd, 317 F. (2d) 927 (1 Cir.), cert. denied, 375 U.S. 931 (1963); *Moore-McCormack Lines, Inc. vs. Richardson*, 1962 A.M.C. 804, 295 F. (2d) 583 (2 Cir. 1961), cert. denied, 368 U.S. 989, 1962 A.M.C. 2211 (1962); *Whitaker vs. Blidberg Rothschild Co., Inc.*, 1961 A.M.C. 773, 195 F. Supp. 420 (E.D. Va.) aff'd, 1962 A.M.C. 678, 296 F. (2d) 554 (4 Cir., 1961); *Civil vs. Waterman S. S. Corp.*, 1955 A.M.C. 21, 217 F. (2d) 94 (2 Cir., 1954); *Middleton vs. Luckenbach S. S. Co.*, 1934 A.M.C. 649, 70 F. (2d) 326 (2 Cir., 1934); *Ridgedell vs. Olympic Towing Corp.*, 1962 A.M.C. 1831, 205 F. Supp. 952 (E.D. La., 1962). *Petition of Gulf Oil Corp.*, 1960 A.M.C. 341, 172 F. Supp. 911 (S.D.N.Y., 1959); *McLaughlin vs. Blidberg Rothschild Co., Inc.*, 1959 A.M.C. 1385, 167 F. Supp. 714 (S.D.N.Y., 1958); *Tetterton vs. Arctic Tankers, Inc.*, 1954 A.M.C. 397, 116 F. Supp. 429 (E.D. Pa., 1953); *Syville vs. Waterman S. S. Corp.*, 1949 A.M.C. 1578, 83 F. Supp. 718 (S.D.N.Y. 1948); *Four Sisters*, 1947 A.M.C. 1623, 75 F. Supp. 399 (D. Mass., 1947). The text writers agree with this analysis. See 1 Benedict, Admiralty, 384 (6th ed., 1940); 2 Norris, Law of Seamen, 775-77 (2d ed., 1962); Gilmore & Black, The Law of Admiralty, 304 (1957)."

In *Higa vs. Transocean Airlines*, 230 F.2d 780 (1965) cert. den. 352 U.S. 802, a plane on its way to Hawaii crashed in the high seas and caused the death of Higa. Higa had been a citizen of Hawaii. His administrators brought suit seeking recovery under the Death on the High Seas Act and also recovery under the Hawaiian wrongful death statute. The Court took special note that the plane had been owned not by an Hawaiian corporation but by a California corporation. The Court dismissed the action based on the Hawaiian Code because "there is no provision of that Code or decisions of the Hawaiian Courts making it applicable to death on the high seas beyond the territorial waters" 230 F.2d at 781. This language is most favorable to petitioners in the instant cases inasmuch as there is a provision of law, the Outer Continental Shelf Lands Act specifically applying the Louisiana Death Act to the locality where the death occurred and there is a decision, *The E. B. Ward, Jr.*, 17 Fed. 456, applying the Louisiana Death Act to death on the high seas.

In *Higa* the Court ruled that the Death on the High Seas Act did not in any way preempt or disturb or otherwise affect any existing other death remedies. The Court, in that connection, reviewed the legislative history of the Death on the High Seas Act and stated that Section 767 of the Act entitled "Exceptions from operation of this chapter" (which section provides "the provision of any state statute giving or regulating rights of action or remedies for death shall not be affected by this chapter") meant precisely

ly what it said and that the legislator most responsible for the act no doubt had in mind preserving and leaving unaffected those causes of action allowed by the state death act. The Court cited some of the cases already on the books at the time of the passage of the Death on the High Seas Act which had allowed recovery pursuant to state death acts for deaths occurring on the high seas and noted that the legislator no doubt had those cases in mind. Among those cases the Court listed the heretofore referred to Louisiana case, *The E. B. Ward, Jr.*, 17 Fed. 456. The Court ruled:

"In considering this contention it is of importance that the High Seas Act deprived no state or federal court of a then existing right. As to the state courts 46 U.S.C.A. sec. 767 provides:

Sec. 767. Exceptions from operation of chapter. The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter.

As originally drafted, the bill had an added clause limiting the state to acts in its own waters, reading: 'as to causes of action accruing within the territorial limits of any state'. Representative Mann offered an amendment striking out this clause. Mann gave as his reason for striking out the limiting clause that it was to save state statutes giving jurisdiction in high seas death cases. Some opposed because they wanted the Act to be exclusive. Others agreed to the amend-

ment on the ground that Section 767 as passed would be held invalid on the ground of the constitutional control of Congress discussed above. Congress agreed with Mann who offered the amendment and the limitation was stricken from the bill.

Further, Mann no doubt had in mind some one of the federal cases, holding that the laws of the state controlled the action of persons within ships on the high seas and had construed their death statutes as applying there. *Southern Pac. Co. vs. De Valle Da Costa*, 1 Cir., 1911, 190 F. 689; *International Nav. Co. v. Lindstrom*, 2 Cir. 1903, 123 F. 475; *The James McGee*, S.D.N.Y. 1924, 300 F. 93; *The E. B. Ward, Jr.*, C.C.E.D.La. 1883, 17 F. 456. (Emphasis added.)

Even if Congress had not agreed with the interpretation of the proponent of the amendment, we would hesitate to construe the exceptive clause as depriving the states of the then existing jurisdictions shown as exercised in the above cited cases."

The court's citation (above) of *The E. B. Ward, Jr.*, which had applied the Louisiana Death Act to a death occurring on the high seas as one of the cases showing the then existing jurisdiction of the state courts for which the last section of the Death on the High Seas Act was enacted is a further pronouncement that the Death on the High Seas Act is not the exclusive remedy in the instant case.

There are additional numerous decisions of the district courts touching the question at issue. For example, the court in *Abbott vs. U. S.*, 207 F. Supp. 468 (S.D.N.Y. 1962), 1962 A.M.C. 2350 ruled:

"The Supreme Court held that before the DHSA there was no action for wrongful death under the general maritime law. *Western Fuel Co. vs. Garcia*, 257 U.S. 233 (1921); *Harrisburg*, 119 U.S. 199 (1886). However, admiralty courts in the absence of the DHSA invoked state wrongful death statutes to grant such recovery. *Western Fuel Co. vs. Garcia*, *supra*, (death in territorial waters); *Hamilton*, 207 U.S. 398 (1907) (death on high seas). The DHSA created a federal cause of action for wrongful death on the high seas, and, when death occurs in territorial waters, preserved the rights given by the wrongful death statute of that state. 46 U.S. Code, sec. 767. It is generally agreed that the DHSA does not preempt the field of recovery for injuries sustained on the high seas which result in death." (Emphasis added) See Comment, *supra*, 60 Colum. L. Rev. at 536-37, and authorities cited.

In *McLaughlin vs. Blidberg Rothschild Company*, 156 F. Supp. 379 (S.D.N.Y. 1957) and in the companion case (*McLaughlin vs. Blidberg Rothschild Company*, 156 F. Supp. 381) involving deaths on the high seas in which the plaintiffs claimed pecuniary losses under the Death on the High Seas Act requesting trial by the Judge in admiralty and also brought suit,

with trial by jury, under the Japanese law which allows recovery not only for pecuniary losses but for the other damages as well. The procedure there was the same as requested by appellant in the instant case in the court below. In the *McLaughlin* cases the court allowed the procedure and ordered a joint trial of the civil and admiralty actions inasmuch as there were some common issues involved.

Thus it is clearly seen that the Death on the High Seas Act is not an exclusive remedy.

Certainly, in light of the cases cited and referred to above it can not be said that it is inconsistent with federal laws and regulations for state law to grant additional remedies in death cases to what is available under federal law. Additionally, see *Romero vs. International Terminal Operating Co.*, 358 U.S. 354, 1958 A.M.C. 832, wherein this Court stated that state death statutes which grant more than what would have been granted by the bare federal maritime law are not "inconsistent" with federal law or federal maritime law. The Court stated:

"It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions, both historically absent from the relief of-

ferred by the admiralty, have been upheld when applied to maritime causes of action. Federal courts have enforced these statutes. State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a breach of warranty under contracts of maritime insurance—all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity.” (Emphasis added.)

As seen in the quoted language above, wrongful death is not an area of law requiring absolute uniformity; especially is this true when the Federal Death on the High Seas Act provides a uniform basic recovery with the State Death laws, where available, supplementing the basic recovery.

The state death acts are applied regularly in admiralty. See, for example *Tungus v. Shougaard*, 358 U.S. 588, 1958 A.M.C. 813; *United Pilots Association v. Helecki*, 358 U.S. 613, 1959 A.M.C. 588; *Hess vs. U. S.*, 361 U.S. 314, 1960 A.M.C. 527; *Byrd vs. Napoleon Avenue Ferry*, 152 F. Supp. 573 (E.D.La. 1954); aff. 227 F.2d 958 (5th Cir., 1954). All of the above cases, and many, many others, illustrate that in a federal jurisdiction, i.e. over the navigable waters of the United States, the state death acts, which differ from state to state, are regularly used in actions for wrongful death.

Similarly, a case most in point is the decision of the United States Supreme Court in the case of *Just v. Chambers*, 312 U.S. 383, 61, 687, 1941 A.M.C. 430. In that case the court had before it the then novel question of whether in an admiralty proceeding the causes of action for personal injury die with the person or whether, on the other hand, a state survival statute could be applied in admiralty so as to preserve the claim. In dealing with that question the Supreme Court ruled:

"For, while the injury occurred on navigable waters, these were within the limits of Florida whose legislation provided that the cause of action should survive. And it is not a principle of our maritime law that a court of admiralty must invariably refuse to recognize and enforce a liability which the State has established in dealing with a maritime subject. *On the contrary, there are numerous instances in which the general maritime law has been modified or supplemented* (emphasis added) *by state action, as e.g. in creating liens for repairs or supplies furnished to a vessel in her home port. The Lottawanna, 88 U.S. 558, 580; The J. E. Rumbell, 148 U.S. 1, 12.* With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation. *The City of Norwalk, 55 Fed.*

98; *Western Fuel Company v. Garcia*, 257 U.S. 232, 242; *Great Lakes Company v. Kierejewski*, 261 U.S. 479, 1923 A.M.C. 441; *Vancouver Steamship Co. v. Rice*, 288 U.S. 445, 1933 A.M.C. 487."

Immediately before the portion of the opinion above, the Supreme Court very pertinently (here) observed:

"The 'Death on the High Seas' Act, 46 Ma-
son's U.S.C., secs. 761-768, is not applicable, as it
occupies a limited field *and even as to wrongful
death provides that the provisions of state stat-
utes shall not be affected.*" (Emphasis added.)

Moreover, in the *Dore* case, the case to which the Fifth Circuit referred for an opinion in the *Rodrigue* case the Fifth Circuit apparently relied on and quoted from the above referred to *Higa* case, but the language, the exchange between the legislators, that is quoted from the *Higa* case in the *Dore* case for the proposition that the Death on the High Seas Act is the exclusive remedy is *not* pertinent to that issue! In that quoted language, the court in the *Higa* case was dealing with an *additional* issue that was present in the *Higa* case, to-wit: whether a Death on the High Seas Act case could be heard by a jury in a civil action or whether, on the other hand, it could be heard only in admiralty by the judge alone. Properly, the *Higa* court quoted the congressmen in ruling that the Death on the High Seas Act must be heard in admiralty. But this quoted language has nothing to do with whether the Death on the High Seas Act is an ex-

clusive remedy—yet that is the issue for which the Fifth Circuit in the *Dore* case cites the quoted exchange between the congressmen as controlling! See the *Dore* case, at p. 50, Appendix C (Paragraph beginning "The legislative history . . .").

Also, the holdings of the Fifth Circuit in the three additional cases (*Loffland Bros. vs. Roberts*, 5th Cir., 1967, No. 23,835, 386 F.2d 540, *Ocean Drilling & Exp. Co. vs. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F.2d 511; and *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F.2d 60) cited by it at the end of its opinion in the *Rodrigue* case do not stand for the proposition that the Death on the High Seas Act is the exclusive remedy. In each of these three cases, the defendant was contending that the exclusive remedy was Louisiana Law. In each of the cases, however, the Louisiana Law would not have allowed recovery. In *Snipes*, the Statute of Limitations, (prescription) had run on the Louisiana action, whereas the Federal doctrine of laches will allow the action to be maintained. In the *Ocean Drilling* case, the only question involved was whether the exclusive remedy provisions in the Longshoremen and Harbor Workers' Compensation Act which had been specifically, by statute, extended to cover the area in question, prohibit a claim by a third party tortfeasor for contribution from the injured employee's employer who was an alleged tortfeasor. The contention that Louisiana jurisprudence was applicable was rejected; obviously, Louisiana Law could not be involved to interpret the Federal Statute. In *Loffland*

Bros., there had been a finding of contributory negligence which would bar recovery if the Louisiana action were the exclusive remedy. In each of those cases, the Fifth Circuit simply denied the defendants' contentions that the Louisiana law was the exclusive remedy and thus allowed the case to be pursued under Federal law. The issue in those cases was not whether the Federal law was the exclusive remedy. On the contrary, the issue was whether Louisiana law was the exclusive remedy, and the Fifth Circuit consistently held that Louisiana law was not the exclusive remedy. The holdings of those cases do not have any effect on the issue as to whether both remedies can be applied.

There is nothing whatsoever unusual in allowing cumulative remedies for the same incident. In fact, it is the rule rather than the exception in maritime cases. As is seen in *Doyle vs. Albatross Tanker Corporation*, 367 F.2d 465, both the Jones Act and the Death on the High Seas Act can be applied to the same death. That an injured seaman is entitled to a remedy under both the doctrine of unseaworthiness and the Jones Act is "old hat" to say the least. Additionally, the allowance of both an action for damages and an action for maintenance and cure arising out of the same injury is universally recognized and unquestioned.

The men who work on the offshore oil platforms in the Outer Continental Shelf do so at great risk to their lives and incur the perils of the sea. Yet they

are denied a Jones Act remedy and the warranty of unseaworthiness. Inasmuch as there is a statute, the Outer Continental Shelf Lands Act, extending the law of the adjacent state to the artificial islands, why should these men be denied the supplemental remedy?

It is respectfully submitted that the Death on the High Seas Act does not provide the exclusive remedy for wrongful death occurring upon one of the artificial islands in the Outer Continental Shelf off the coast of Louisiana but rather that the Louisiana Death Act as extended by the Outer Continental Shelf Lands Act supplements it and provides additional remedies.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

.....,
A. DEUTSCHE O'NEAL,

.....,
PHILIP E. HENDERSON,

.....,
CHARLES J. HANEMANN, JR.,
Of O'NEAL, WAITZ & HENDERSON,
O'Neal Building,
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Houma, Louisiana 70360,

.....
 GEORGE ARCENEUX, JR.,
 Of DUVAL, ARCENEUX & LEWIS,
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 Attorneys for Paulette
 Boudreaux Rodrigue.

.....
 ALFRED S. LANDRY,
 Of LANDRY, WATKINS, COUSIN &
 BONIN,
 211 East Main Street,
 New Iberia, Louisiana,
 Attorneys for Petitioner Ella
 Mae Dore.

CERTIFICATE.

This is to certify that I have this day mailed a copy of the above and foregoing Petition for a Writ of Certiorari to Mr. Richard C. Baldwin, Adams and Reese, 847 National Bank of Commerce Building, New Orleans, Louisiana; Mr. Thomas W. Thorne, Jr., Lemle, Kelleher, Kohlmeyer, Matthews & Schumacher, National Bank of Commerce Building, New Orleans, Louisiana; Mr. Lancelot P. Olinde, Humble Oil and Refining Company, P. O. Box 60626, New Orleans, Louisiana, H. Lee Leonard, Voorhies, Labbe, Fontenot, Leonard & McGlasson, Lafayette, Louisiana; and James E. Diaz, Davidson, Meaux, Onebane & Donohoe, 201 West Main Street, Lafayette, Louisiana.

August ..., 1968.

.....

APPENDIX A.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No.

**UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF LOUISIANA.**

No. 3109 Civil Action.

PAULETTE BOUDREAUX RODRIGUE,
Plaintiff,
versus

**THE AETNA CASUALTY AND SURETY COMPANY and
HUMBLE OIL AND REFINING COMPANY,**
Defendants.

JUDGMENT.

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

**IT IS THEREFORE ORDERED, ADJUDGED,
AND DECREED** that judgment be entered in favor of the remaining defendant, Humble Oil and Refining

Company, and against plaintiff, Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and administratrix of the estate of her two minor children, Angela Rae Rodrigue, and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,
Clerk,

By /s/ C. H. BANTA,
Deputy Clerk,
/s/ E. G. W.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No.

**UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF LOUISIANA.**

No. 3298 Civil Action.

PAULETTE BOUDREAUX RODRIGUE,
Plaintiff,

versus

**RUBIN W. MAYRONNE, JR., d/b/a MAYRONNE
DRILLING COMPANY,**
Defendant.

JUDGMENT.

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

**IT IS THEREFORE ORDERED, ADJUDGED
AND DECREED** that judgment be entered in favor of the remaining defendants, Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company, and Humble Oil and Refining Company, and against plaintiff,

Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and tutrix of and administratrix of the estate of her minor children, Angela Rae Rodrigue and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,
Clerk,

By /s/ C. H. BANTA,
Deputy Clerk,
/s/ E. G. W.

Transcript of Ruling of the Court, dismissing Civil Actions 3109 and 3298, made in Open Court on September 21, 1966, at the United States Courthouse, Baton Rouge, Louisiana; the Honorable E. Gordon West, United States District Judge, presiding.

Appearances:

Messrs. O'Neal & Waitz, By: A. Deutsch O'Neal, Sr., Esq., and Philip E. Henderson, Esq., Houma, Louisiana, Attorneys for Plaintiffs.

Messrs. Lemle & Kelleher, By: Thomas W. Thorne, Jr., Esq., National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Employers National Insurance Company.

Alexander C. Cocke, Esq., P. O. Box 60626, New Orleans, Louisiana, Attorney for Humble Oil & Refining Company, Defendant.

Messrs. Adams & Reese, By: Richard C. Baldwin, Esq., National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Humble Oil & Refining Company and Mayronne Drilling Company, Defendants.

Reported by Felix L. Olivier, Official Court Reporter.

The Court:

During the recess, the Court took under advisement for reconsideration the motions which had previously been filed by the defendants in the civil suits and the respondents in the admiralty action to dismiss each of the three actions, the diversity action number 3109, the outer continental shelf action, number 3298, and the admiralty action, number 810.

Let the record further show that after hearing argument of counsel during the noon recess and after reconsidering all of the briefs that have previously been filed in this matter, together with a reconsideration of the law that I believe to be applicable to these motions, I will make the following rulings with the understanding that these rulings supersede and take the place of any contrary rulings that I might have previously made with regard to these or similar motions in these three cases.

First, with regard to Civil Action 3109, which is a case based not on the allegation of the applicability of the outer continental shelf act, but simply on diver-

sity of citizenship with more than ten thousand dollars involved, the Court is of the opinion that that suit should be dismissed on the ground that this accident, by agreement of counsel, as contained in the pre-trial order, occurred more than a marine league off the coast of Louisiana in the area known as the outer continental shelf. Thus, there is no jurisdiction in this Court over an action being as I say an action brought on a suit occurring outside of the State of Louisiana.

Insofar as Civil Action 3298 is concerned, this is an action brought specifically under the provisions of the outer continental shelf act. It is the defendant's contention in this suit that this matter is barred by prescription because of the fact that suit was filed more than one year, but less than two years, following the accident, and the defendant contends that if as declared in the outer continental shelf act the Law of Louisiana is extended to cover this situation, not only must the provisions of Article 2315 of the Civil Code providing for an action for wrongful death be extended, but also the one year prescriptive period must be extended and thus the case will be prescribed by one year. It is the defendant's further contention in support of the motion that the outer continental shelf act would only make state law applicable to this area to fill a void not provided for in federal law, and that if in fact federal law did grant to the plaintiffs a right of action for wrongful death, then they could not also have the advantage of the extension of state law under the outer continental shelf act. The

defendant further claims that if Article 2315 is extended under the provisions of the outer continental shelf act, that then of necessity, the Louisiana Workmen's Compensation law would be extended, thus limiting the right of plaintiff to sue in workmen's compensation because of the fact that he was performing part of the trade, business or occupation of the prime contractor.

The defendant further claims in connection with this suit that under the holding of *Pure Oil Company versus Snipes*, 293 Fed. (2) at page 60, that Article 2315 of the Louisiana Civil Code does not, in fact, cover this case, but that instead the Federal law must cover. Of course, needless to say, counsel for plaintiff disagrees with all of these contentions and argues, and cited his authorities therefor. It is the opinion of this Court that suit 3298 must also be dismissed and that this suit must proceed as a suit in admiralty under the "Death on the High Seas" statute.

In *Pure Oil versus Snipes*, in a very detailed opinion by Judge Brown of the Fifth Circuit Court of Appeals, it was specifically and categorically held that the one year prescriptive period of Article 2315 did not apply to an accident occurring on a fixed platform outside of the Continental Limits of the State of Louisiana, and that in fact Louisiana law did not apply, but that Federal Maritime law would apply. Rightly or wrongly, this is the specific holding in *Pure Oil versus Snipes*. It is the reasoning of the

Court in *Pure Oil versus Snipes*, referring particularly to the question of the applicability of the Workmen's Compensation Statute, that Congress did not intend to apply such laws to an accident happening on a fixed platform, and they referred specifically to the limitations placed upon an employe to sue his employer, and Judge Brown says, that in the opinion of that Court, Congress did not intend to place such varied restrictions on employes working in the outer continental shelf area as would be applied if the laws of all of the various states bordering on navigable waters were applied rather than the laws of Federal Maritime—provisions of Federal Maritime law.

You will recall that in that case, Judge Brown further pointed to the fact that the outer continental shelf act contemplated the Longshoremen and Harborworkers Act as the remedy for a person injured on a fixed platform located outside of the limits of the state, and he pointed to that along with other provisions of the act that indicated clearly the intent of Congress to apply not state law but Federal law and then more specifically the Federal Maritime law to accidents happening in this area.

So we come now to the question of Federal Maritime law. If we are to say as the *Snipes* case did say, that Louisiana law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that Federal Maritime law which does give a right of action for wrongful death must

apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply Maritime law as Judge Brown said in the Snipes case must be applied, then Death on the High Seas is the maritime law and the Death on the High Seas statute does provide for wrongful death and, consequently, both the intent of Congress and the interpretation at least in the Snipes case and the rights of the plaintiff are preserved and protected.

So I will dismiss, and grant the motion to dismiss 3298, which is the action based upon the outer continental shelf act against Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, as the only defendant.

» This will leave the suit as one in admiralty to be tried without a jury to the Court alone with the defendants being Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, and Humble Oil and Refining Company. I believe that is correct, is it not?

Mr. Baldwin:

Yes, sir.

The Court:

With that explanation, gentlemen, and after much, much thought and all the study that I know how to give to this very disturbing, and I might say mixed-up problem, that is the conclusion that I find that I must inevitably come to.

APPENDIX B.**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT****No. 24504****PAULETTE BOUDREAUX RODRIGUE, ETC.,
Appellant,
versus****AETNA CASUALTY AND SURETY COMPANY, ET AL.,
Appellees.****Appeal from the United States District Court for the
Eastern District of Louisiana.****(May 16, 1968.)****Before BELL, AINSWORTH and GODBOLD, Circuit
Judges.**

PER CURIAM: Appellant's husband was killed in an accident on the derrick of a drilling rig on a fixed structure located on the Outer Continental Shelf approximately 28 miles south of Grand Isle, Louisiana. The District Judge dismissed appellant's civil suits based upon Louisiana's Death Statute (La. R.C.C. Art. 2315) but retained jurisdiction over her suit in Admiralty under the Death on the High Seas Act (46 U.S.C. § 671, et seq.) and awarded a substantial judgment under that Act.

The contention that under Section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1331), appellant may bring an action for damages under the Louisiana Death Statute (La. R.C.C. Art. 2315) has recently been decided by us adversely to the contentions of appellant. In *Dore, et al. v. Link Belt Co., et al.*, 5 Cir., 1968, F.2d [No. 24370 decided March 25, 1968], we held that the exclusive remedy under these circumstances is the Death on the High Seas Act. We are not persuaded that we should change our holding in *Dore*, which is supported by three recent decisions of this Court in *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied, U. S., S. Ct. (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; and *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

October Term, 1967.

No. 24504.

D. C. Docket Nos. CA 3109 & CA 3298.

**PAULETTE BOUDREAUX RODRIGUE, ETC.,
Appellant,**

versus

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Eastern District of Louisiana.**

**Before BELL, AINSWORTH and GODBOLD, Circuit
Judges.**

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Paulette Boudreaux Rodrigue, Etc., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 16, 1968

Issued as Mandate: JUN 7 1968

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APPENDIX C.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24370

ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO ELLA DORE,

Appellants,

versus

THE LINK BELT COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the
Western District of Louisiana.

(March 25, 1968.)

Before GEWIN, BELL and AINSWORTH, Circuit
Judges.

AINSWORTH, Circuit Judge: The issue with which
we are concerned is whether the Death on the High
Seas Act, 46 U.S.C. § 761, et seq.,¹ is the exclusive

¹ The pertinent provisions of the Death on the High Seas Act
follow:

46 U.S.C. § 761:

"Whenever the death of a person shall be caused by wrong-
ful act, neglect, or default occurring on the high seas beyond
a marine league from the shore of any State . . . the
personal representative of the decedent may maintain a suit

remedy of claimants in an action growing out of the death of an oil field worker which occurred on a stationary offshore drilling platform on the outer Continental Shelf of the Gulf of Mexico beyond a marine league from the Louisiana shore. Plaintiffs, who are the surviving wife and children of the deceased worker, contend that the Act, which provides for recovery only for the pecuniary loss sustained, should be supplemented by Louisiana statutory law which provides a broader remedy for damages.²

for damages in the district courts of the United States, in admiralty, . . ."

46 U.S.C. § 762:

"The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought"

46 U.S.C. § 763:

"Suit shall be begun within two years from the date of such wrongful act"

46 U.S.C. § 766:

"In suits under this chapter the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly."

46 U.S.C. § 767:

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.

² Louisiana statutory law on the subject is found in Louisiana Revised Civil Code Art. 2315, which provides in pertinent part as follows:

"Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

"The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse.

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor

Pursuant to motions to dismiss of defendants, The Link Belt Company and Road Equipment Company, the district court entered judgment against plaintiffs, limiting them to a claim in Admiralty for pecuniary loss under the Death on the High Seas Act.*

Plaintiffs appealed from the judgment and specify the following errors:

"The lower court erred in holding that the plaintiffs, Ella Mae Dubois Dore, individually and as natural tutrix of the minors, Rodney James, Vickie Ann and Jo Ella Dore, had no standing in court; and in holding that the exclusive remedy for the death of Joseph Dore was for 'pecuniary losses' only under the Death on the High Seas Act, 46 U.S.C.A., Section 761, et seq., in striking from the com-

of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs, whether suit has been instituted thereon by the survivor or not."

* After this case was appealed the district judge, with our approval, amended his judgment to certify the question as required by Rule 54(b), Federal Rules of Civil Procedure. See *Cold Metal Process Co. v. United Eng. & Fdry. Co.*, 351 U.S. 445, 76 S. Ct. 904 (1956), where a similar certification after appeal was approved by the Supreme Court.

plaint all items of damage other than 'pecuniary loss' and in directing that this case be removed to the Admiralty side of the Court and that plaintiffs would not have a right to trial by jury."

Decedent, Joseph Dore, an oil field worker, was killed while working on a stationary offshore drilling platform on the outer Continental Shelf in the Gulf of Mexico south of the State of Louisiana, approximately fifty miles seaward from Marsh Island, when a crane which he was operating and which it is alleged was "sold, manufactured, supplied and installed" by defendants, The Link Belt Company and Road Equipment Company, collapsed and fell more than sixty feet.⁴ The widow of decedent instituted a civil action on her behalf and that of the minor Dore children, alleging negligence by defendants⁵ under the General Maritime Laws, Death on the High Seas Act, 46 U.S.C. § 761, et seq., and Article 2315 of the Revised Civil Code of Louisiana, claiming damages for

⁴ By stipulation between the parties filed subsequent to the hearing and attached to the trial judge's certification under Rule 54(b), Federal Rules of Civil Procedure, it was agreed that the work was being performed on the "outer Continental Shelf" and that the accident occurred in the following manner:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."

⁵ There is a lack of complete diversity. Plaintiffs are citizens of Louisiana. Road Equipment Company is a Louisiana corporation. The Link Belt Company is a foreign corporation.

"loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock."

Appellants contend that under the "savings-to-suitors" clause, 28 U.S.C. § 1333,⁶ and under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq.,⁷ state remedies are available to them in addi-

⁶ 28 U.S.C. § 1333 provides in pertinent part:

"The district courts shall have original jurisdiction, exclusive of the courts of the States of:

"(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

⁷ The pertinent parts of the Act provide:

43 U.S.C. § 1332:

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

43 U.S.C. § 1333:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State:

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States.

tion to the remedy provided by the Death on the High Seas Act, 46 U.S.C. § 761, et seq.

Under the Death on the High Seas Act, when wrongful death occurs beyond a marine league from the shore of any state, a remedy is provided in Admiralty in the United States courts. Under the Outer Continental Shelf Lands Act, the laws of the United States are extended to the subsoil, seabed, artificial islands and fixed structures on the outer Continental Shelf. Laws of adjacent states, to the extent that they are applicable and not inconsistent with the Outer Continental Shelf Act or other federal laws, are under that Act declared to be the law of the United States. The site of decedent's death, fifty miles south of Marsh Island, Louisiana, on the Shelf, is in an area encompassed by both the Death on the High Seas Act and the Outer Continental Shelf Lands Act.

Appellants contend that the language of the Outer Continental Shelf Lands Act which makes applicable the laws of the adjacent state under certain circumstances requires an interpretation that the law of Louisiana is applicable.

Necessarily, Louisiana law must not be inconsistent with federal law to warrant this interpretation. Several inconsistencies between federal law and the law of Louisiana are apparent; for example, the law of Louisiana, which provides *inter alia* for broad remedies for wrongful death, such as loss of love and affection, etc., limits the time to one year within which

an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period in which an action may be brought, and mere diminution of damages in the event of comparative negligence.

Determination of which law is to apply to cases involving death of a maritime worker on the outer Continental Shelf presents a question of first impression for this Court. In the present case the death occurred beyond a marine league from shore. We have had several occasions, however, to resolve disputes centered around the question of whether federal or state law is applicable to torts, in which a maritime worker suffered personal injuries, occurring on the outer Continental Shelf. We have uniformly held that federal law is the applicable law. *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied U. S., S. Ct. (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; *Pure Oil Co v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.⁸ In *Loffland*, the defendant urged that Louisiana law was applicable on the Continental Shelf, under which law recovery for physical injury would have been barred because of plaintiff's contributory negligence, as opposed to diminution of damages under the maritime concept of comparative negligence. In rejecting defendant's argument, we said (386 F. 2d at 545):

⁸ See also *Touchet v. Travelers Indemnity Company*, D. C., W. D. La., 1963, 221 F. Supp. 376.

"In *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms. That decision has been consistently followed by this Court."

In *Pure Oil* plaintiff fell through an open space in a platform located on the outer Continental Shelf into the ocean below and suffered severe injuries. Defendants argued that plaintiff's right to recover had prescribed under the one-year Louisiana statute. We disagreed and said that federal and not state law was pertinent. We said (293 F. 2d at 64):

"In every sense of the word this happened on the high seas. It did not happen in Louisiana. Nor did it happen in waters which Louisiana could regard as within her territorial boundaries. . . .

"We think that a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State, law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United

States. In connection with the latter phase—the choice by Congress of maritime law—it is again important to keep in mind that we are in an area in which Congress has an almost unlimited power to determine what standards shall comprise the Federal law.”

While it is true that *Loffland, Pure Oil Co.*, and *Ocean Drilling & Exp. Co.* relate to injuries sustained by workmen and not to their death, we do not regard this distinction as decisive. The rationale of these opinions is equally and logically applicable to torts which result in death of a worker.

Appellants’ further contention that their state remedies are preserved under the “savings-to-suitors” clause of 28 U.S.C. § 1333 is not tenable. We know of no theory in law under which a site in the Gulf of Mexico more than fifty miles from the shore of Louisiana can be considered as part of the State.⁹ The conclusion is clear that there is no remedy to save under 28 U.S.C. § 1333. Cf. *Jennings v. Goodyear Aircraft Corporation*, D.C., D. Del., 1964, 227 F. Supp. 246.

⁹ The site of the accident, approximately fifty miles seaward of Marsh Island and south of the State of Louisiana, cannot conceivably be considered within the boundary of the State of Louisiana, either under the three-mile limitation of the Submerged Lands Act, 43 U.S.C. § 1301, or by virtue of the pronouncement by the United States Supreme Court in *United States v. States of Louisiana, Etc.*, 363 U. S. 1, 80 S. Ct. 961 (1960), restricting Louisiana’s submerged lands rights to an area within three geographical miles from the coastline of that State (363 U. S. at 79), but leaving unsettled the location of that coastline (363 U. S. at 65, 79).

No right or remedy existed for the death on the high seas of a non-seaman maritime worker prior to the enactment of the Death on the High Seas Act. The maritime law provided no cause of action for wrongful death. *The Harrisburg*, 119 U. S. 199, 7 S. Ct. 140 (1886). When Congress had remained silent, state death statutes were recognized and enforced by Admiralty courts in claims arising from torts on the high seas. *The Hamilton*, 207 U. S. 398, 28 S. Ct. 133 (1907). With the passage of the Death on the High Seas Act, it is pertinent to inquire whether state statutes allowing for recovery for wrongful death are preempted by the Act. The issue is a novel one for this Court, and the United States Supreme Court has made no pronouncement in this regard.

The legislative history indicates that when Congress passed the Death on the High Seas Act it intended the remedy it provided to be an exclusive one. In *Higa v. Transocean Airlines*, 9 Cir., 1955, 230 F. 2d 780, 783, 784, the Court set forth the following colloquy which occurred during the debate in the House of Representatives:

“Mr. Igoe. Does not the gentleman think that he should inform the gentleman from Ohio (Mr. Ricketts) that this proceeding will be in admiralty and that there will be no jury, so that no Member of the House may have any misunderstanding about it? That question was thrashed out and it was decided best not to

incorporate into this bill a jury trial because of the difficulties in admiralty proceedings.' (Page 4482. Emphasis added.)

"Mr. Moore of Virginia. * * * The purpose of this bill, as I understand it, is to give exclusive jurisdiction to the admiralty courts where the accident occurs on the high seas.

"Mr. Volstead. That is it.' (Page 4483.) Congressional Record, Volume 59, Part V."

The Ninth Circuit concluded, "Construing the Act's words, if Higa's diversity proceeding at common law were permitted by the High Seas Act it would make superfluous its words 'in admiralty.'"¹⁰

Appellants call our attention to several federal district court decisions which give effect to state wrongful death statutes in addition to remedies under the Death on the High Seas Act.¹¹ However, there are other federal district courts whose holdings are to the contrary.¹² The two United States Supreme Court

¹⁰ Cf. *Middleton v. Luckenbach S. S. Co.*, 2 Cir., 1934, 70 F. 2d 326.

¹¹ *Safir v. Compagnie Generale Transatlantique*, D. C., E. D. N. Y., 1965, 241 F. Supp. 501; *Cunningham v. Bethlehem Steel Co.*, D. C., S. D. N. Y., 1964, 231 F. Supp. 934; *Abbott v. United States*, D. C., S. D. N. Y., 1962, 207 F. Supp. 468; *Williams v. Moran, Proctor, Mueser & Rutledge*, D. C., S. D. N. Y., 1962, 205 F. Supp. 208.

¹² For holdings contrary to the above cited cases, see *Montgomery v. Goodyear Tire & Rubber Company*, D. C., S. D. N. Y., 1964, 231 F. Supp. 447; *Jennings v. Goodyear Aircraft Corporation*, D. C., Del., 1964, 227 F. Supp. 246; *Devlin v. Flying Tiger Lines, Inc.*, D. C., S. D. N. Y., 1963, 220 F. Supp. 924; *Wilson v. Transocean Airlines*, D. C., N. D. Calif., 1954, 121 F. Supp. 85; *Blumenthal*

cases cited by appellants, *Just v. Chambers*, 312 U. S. 383, 61 S. Ct. 687 (1941) and *Kernan v. American Dredging Company*, 335 U. S. 426, 78 S. Ct. 394 (1958), are inapposite to the present case. Both cases are concerned with torts occurring within state territorial waters, not on the high seas. In *Just v. Chambers*, *supra*, a yacht owner who subsequently died attempting to limit his liability in claims for injuries sustained by passengers as a result of his alleged negligence on navigable waters within the territorial limits of the State of Florida. In reversing the Fifth Circuit and affirming the district court's finding that under a statute of Florida the claimants' causes of action survived the owner's death, the Supreme Court recognized the "authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federal laws or the essential features of an exclusive federal jurisdiction." The Court held that it saw "no reason why, under this test, the Florida rule in providing for the survival of a cause of action against a deceased tortfeasor for injuries occurring on navigable waters within the limits of the State should not be applied." (312 U. S. at 391.) *Kernan v. American Dredging Company*, *supra*, is a limitation proceeding in which a claim for damages was filed as the result of the death of a seaman who lost his life on a tug in the Schuylkill River in Philadelphia. Apparently the language to which appellants refer is that contained at page 430

v. United States, D. C., E. D. Pa., 1960, 189 F. Supp. 439; *Echavarria v. Atlantic & Caribbean Steam Nav. Co.*, D. C., E. D. N. Y., 1935, 10 F. Supp. 677.

in footnote 4, where the Supreme Court in dictum says, "Presumably any claims, based on unseaworthiness, for damages accrued prior to the decedent's death would survive, at least if a pertinent state statute is effective to bring about a survival of the seaman's right." That a state death statute will be enforced in Admiralty where death occurs as the result of tortious conduct occurring upon navigable waters of a state within that state's boundaries is of course a basic principle recognized in the savings clause of 28 U.S.C. § 1333, and the uniformity of maritime law is not offended by such enforcement. See *The M/V "Tungus" v. Skovgaard*, 358 U. S. 588, 79 S. Ct. 508 (1959). However, this is not to say that such a state statute would be effective where death occurs not on the territorial waters of a state, not within a marine league from its shores, but more than fifty miles seaward of the shores of that state.

We hold, therefore, that the Death on the High Seas Act provides the exclusive remedy in this case.¹³

AFFIRMED.

¹³ Because of our holding we need not consider appellants' further contentions, not strenuously urged, that other remedies such as the law of the domicile of defendants might be applicable, or that because the action includes a claim for breach of implied warranty state law should apply as no such remedy exists under the Death on the High Seas Act.

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

October Term, 1967.

No. 24370.

D. C. Docket No. CA 11662.

**ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, VICKIE ANN DORE and
JO ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Western District of Louisiana.**

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judg-

ment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Ella Mae Dubois Dore, Individually and as Natural Tutrix of and for and on behalf of her minor children, Rodney James Dore, Vickie Ann Dore and Jo Ella Dore, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

March 25, 1968

Issued as Mandate: May 23, 1968

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 24370.

**ELLA MAE DUBOIS DORE, Individually and as Natural
Tutrix of and for and on behalf of her minor children,
RODNEY JAMES DORE, WICKIE ANN DORE and
JO ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,
Appellees.**

**Appeal from the United States District Court for the
Western District of Louisiana.**

(May 15, 1968.)

PETITION FOR REHEARING.

Before GEWIN, BELL and AINSWORTH, Circuit Judges.

PER CURIAM:

**IT IS ORDERED that appellants' petition for re-
hearing in this cause be, and the same is hereby,
DENIED.**

